

(2013) 04 AHC CK 0201

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 17363 of 2013

Committee of Management, Naraini Devi Balika Junior High
School, Dhanuha, Rampur Through Its Manager

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 02-04-2013

Acts Referred:

Citation : (2013) 04 AHC CK 0201

Hon'ble Judges : Amreshwar Pratap Sahi, J

Final Decision : Disposed Of

Judgement

Amreshwar Pratap Sahi, J.

Heard Sri Umesh Vats, learned counsel for the petitioner, Sri Sanjeev Singh for the respondent No.3, Sri Mrigraj Singh for the respondent No.2 and Sri Vimlesh Rai for the respondent No.1.

This writ petition has been filed assailing the order passed by the District Basic Education Officer, Jaunpur, refusing to exercise his jurisdiction for either approving or disapproving the termination proposal made by the Committee of Management against the respondent No.3 on the ground that the suspension order of the respondent No.3 has been stayed by the High Court in Writ Petition No.6747 of 2006.

Sri Umesh Vats, apart from the other grounds, has raised a primary submission to the failure of the exercise of jurisdiction by the District Basic Education Officer contending that in view of the provisions of Rule 15 of the 1978 Rules, the District Basic Education Officer is obliged to pass an order and he cannot refuse to do so on the pretext of the pendency of the suspension proceedings. The contention is that the suspension proceeding already stands terminated with the passing of the resolution for termination of services of the respondent No.3 and the interim order passed in the suspension order is no legal impediment before the Basic Education Officer to proceed to pass an order of approval or

disapproval under Rule 15.

Sri Sanjeev Singh raised two objections firstly that the writ petition is not maintainable on behalf of the petitioner inasmuch as the very status of the petitioner Committee of Management is doubtful as it is not the validly recognized Committee of Management. The second submission is that the impugned order does not suffer from any infirmity in the background that the petitioner Committee has adopted an attitude of harassment and has proceeded on the basis of charges which was not even the part of the suspension proceedings. He contends that the Committee has found out somehow or the other to dislodge the respondent No.3 and, therefore, the impugned order does not require any interference by this Court.

Having heard learned counsel for the parties and Sri Mrigraj Singh for the respondent Basic Education Officer. The preliminary objection raised by Sri Singh has to be rejected inasmuch as the impugned order has been passed on the resolution passed by the petitioner Committee. It is, therefore, clear that the petitioner Committee is very much aggrieved by the order and there is no other person claiming any such right before the Court. In the circumstances, the writ petition is very much maintainable on behalf of the petitioner Committee. The second objection with regard to harassment as stated by Sri Singh is concerned, the same does not form part of the impugned order as a reason for rejecting the proposal. In such circumstances, the second objection raised by Sri Singh has no legal or factual foundation.

Coming to the submission raised by the learned counsel for the petitioner, the same has to be accepted inasmuch as the pendency of any writ petition or order in the matter relating to the suspension of the employee was of no legal consequence. Finally a resolution for taking action against the respondent No.3 has already been passed by the Committee of Management. It is the correctness or otherwise of such a resolution that has to be examined by the District Basic Education Officer keeping in view the provisions of Rule 15 of the 1978 Rules. The District Basic Education Officer has completely misdirected himself and has, therefore, failed to exercise jurisdiction vested in him. The writ petition, therefore, deserves to be allowed on this short ground.

After the matter was heard at length and the aforesaid opinion was expressed by the Court, learned counsel for all the respondents pray that they do not propose to file any counteraffidavit and the matter be disposed of finally. Accordingly, with the consent of the parties, the matter has been heard and disposed of finally.

For the reasons aforesaid, the impugned order dated 18.12.2012 is set aside. The writ petition is allowed with liberty to the District Basic Education Officer to pass a fresh order within 2 months from the date of production of a certified copy of this order before him.